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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/748,477

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Kay L. Grasso

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EXAMINER

SQUIRES, ELIZA A

ART UNIT

PAPER NUMBER

3626

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/748,477	Applicant(s) GRASSO ET AL.	
	Examiner Eliza Squires	Art Unit 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 26-29, 46 and 51-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 26-29, 46 and 51-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/18/2010</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Notice to Applicant

1. In the amendment filed 2/18/2010, the following has occurred: claims 1, 26 and 46 have been amended. Now claims 1-7, 26-29, 46, and 51-57 are presented for examination.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/18/2010 has been entered.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1-7, 26-29, 46, and 51-57** are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,985,870 to *Martucci et al.* in view of “Tools for Immunization Guideline Knowledge Maintenance” by *Miller*.

5. **As to claims 1 and 26**, *Martucci* discloses a computer-implemented method in a computer system for preventing one or more medications from being administered to a person too early, the method comprising:

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receiving from a clinician, utilizing a first computer process, an identification of an medication to be administered to a person, wherein the identification of the medication is input by the clinician during a clinical visit with the person (*Martucci* figure 7 and column 4 lines 18-50);

in response to receiving the identification of the medication to be administered during the clinical visit, determining, utilizing a second computer process, whether it is too soon to administer the medication based on the custom schedule for the person (*Martucci* figures 15 (j) and (k) and column 11 lines 38-45); and

based on a determination that it is too soon to administer the medication, displaying a warning that the medication is being administered too soon (*Martucci* figures 15 (j) and (k) and column 11 lines 38-45),

based on a determination that it is not too soon to administer the medication displaying a notification that it is safe to administer the medication during the present clinical visit (*Martucci* see figure 14)

wherein the first and second computer processes are executed utilizing one or more computing devices (*Marutcci* see “handheld computing device” in at least the abstract).

Martucci does not explicitly teach that the medication is an immunization, however, the fact that the fluid delivered to a patient is an immunization does not effect any of the steps in the method, therefore, the type of fluid, an immunization is non-functional. Additionally, it would be simple substitution to substitute an immunization for the medication of *Martucci*.

However the reference does not explicitly teach an immunization schedule. *Miller* discloses:

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Receiving a request for an immunization schedule for a person during a present clinical visit (*Miller* page 173)

Generating a custom immunization schedule for the person wherein the custom immunization schedule is based on at least one immunization administered to the person during at least one former clinical visit prior to the present clinical visit, the immunization to be administered to the person during the present clinical visit, and a standard schedule of recommended immunizations (*Miller* page 173).

It would have been obvious to one of ordinary skill in the art at the time of the invention to include in the medication checking system of *Martucci* an immunization scheduler of *Miller* since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

6. **As to claims 2 and 27**, see the discussion of claim 1, additionally, *Martucci* discloses the method further comprising:

upon determining that it is too soon to administer the medicine, determining it is still safe to administer the medicine (*Martucci* figures 15 (j) and (k) and column 11 lines 38-45 wherein a practitioner can choose to continue or to cancel the medication delivery when alerted).

7. **As to claims 3 and 28**, see the discussion of claims 1 and 2, additionally, *Martucci* discloses the method further comprising:

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based on a determination that it is still safe to administer the medicine, wherein if it is safe to administer the medicine, outputting information that it is safe to administer the medicine (*Martucci* figures 13 (a) and (b)).

8. **As to claims 4 and 29**, see the discussion of claims 1 and 2, additionally, *Martucci* discloses the method further comprising further comprising:

upon determining that it is too soon to administer the medicine, determining that it is not safe to administer the medicine (*Martucci* Figure 39); and

based on a determination that it is not safe to administer the medicine, wherein if it is not safe to administer the medicine, outputting information that it is not safe to administer the medicine (*Martucci* Figure 39).

9. **As to claim 5**, see the discussion of claim 1 additionally *Martucci* discloses the method further comprising:

obtaining information regarding the safe timing of medications from a database (*Martucci* figures 15 (j) and (k) and column 11 lines 38-45).

10. **As to claim 6**, see the discussion of claims 1 and 5 additionally *Martucci* discloses the method further comprising:

obtaining information from an electronic medical record of the person stored within a comprehensive healthcare system (*Martucci* column 8 lines 40-57).

11. **As to claim 7**, see the discussion of claims 1 and 5-6 additionally *Martucci* discloses the method further comprising:

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utilizing the information from the electronic medical record of the person and the information regarding safe timing of medications to determine whether an immunization is being administered too soon (*Martucci* figures 15 (j) and (k) and column 11 lines 38-45).

12. **As to claim 46**, *Martucci* discloses a computer-storage medium having computer-executable instructions for performing a method for preventing one or more immunizations from being administered to a person too early, the method comprising:

receiving from a clinician an identification of a medication to be administered to a person, wherein the identification of the immunization is input by the clinician during a clinical visit with the person (*Martucci* figure 7 and column 4 lines 18-50);

in response to receiving the identification of the medication to be administered to the person during the clinical visit, determining whether it is too soon to administer the medication during the clinical visit (*Martucci* figures 15 (j) and (k) and column 11 lines 38-45); and

based on a determination that it is too soon to administer the medication, displaying a warning that the medication is being administered too soon, wherein the warning is a first pop-up warning window (*Martucci* figures 15 (j) and (k) and column 11 lines 38-45);

based on a determination this it is not too soon to administer the medication, determining whether the medication will cause an adverse reaction to the person (*Martucci* Figure 39).

upon determining that the medication will cause an adverse reaction, displaying a warning that the medication will cause an adverse reaction via a second pop-up warning window (*Martucci* Figure 39).

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upon determining that the medication will not cause an adverse reaction, displaying a message that the medication may be administered during the clinical visit (*Martucci* figures 13 (a) and (b)).

Martucci does not explicitly teach that the medication is an immunization, however, the fact that the fluid delivered to a patient is an immunization does not effect any of the steps in the method, therefore, the type of fluid, an immunization is non-functional. Additionally, it would be simple substitution to substitute an immunization for the medication of *Martucci*.

Receiving a request for an immunization schedule for a person during a present clinical visit (*Miller* page 173)

Generating a custom immunization schedule for the person wherein the custom immunization schedule is based on at least one immunization administered to the person during at least one former clinical visit prior to the present clinical visit, the immunization to be administered to the person during the present clinical visit, and a standard schedule of recommended immunizations (*Miller* page 173).

It would have been obvious to one of ordinary skill in the art at the time of the invention to include in the medication checking system of *Martucci* an immunization scheduler of *Miller* since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

13. **As to claim 51**, see the discussion of claim 46, additionally, *Martucci* discloses the computer storage medium further comprising:

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obtaining healthcare information for the person from the person's electronic medical record (*Martucci* column 8 lines 40-57).

14. **As to claim 52**, see the discussion of claim 46, additionally, *Martucci* discloses the computer-readable medium further comprising: obtaining information regarding adverse reactions and immunizations (*Martucci* column 11 lines 58-67).

15. **As to claim 53**, see the discussion of claim 46 and 52, additionally, *Martucci* discloses the computer-readable medium further comprising:

comparing the information regarding adverse reactions to the information for the person obtained from the person's electronic medical record (*Martucci* column 8 lines 58-67).

16. **As to claim 54**, see the discussion of claims 46 and 52-53, additionally, *Martucci* discloses the computer-readable medium wherein the information obtained from the person's electronic medical record includes medications being taken (*Martucci* column 8 lines 58-67).

17. **As to claim 55**, see the discussion of claims 46 and 52-53, additionally, *Martucci* discloses the computer-readable medium wherein the information obtained from the person's electronic medical record includes allergy information (*Martucci* column 8 lines 58-67).

18. **As to claim 56**, see the discussion of claim 46 and 52-53, additionally, *Martucci* discloses the computer-readable medium wherein the information obtained from the person's electronic medical record includes a medical condition that can cause adverse reactions to the medication (*Martucci* column 8 lines 58-67 where in a medical condition is an allergy).

19. **As to claim 57**, see the discussion of claim 46 and 52-53, additionally, *Martucci* discloses The computer-readable medium wherein the information obtained from the person's electronic medical record includes a genetic condition that predisposes the person to adverse

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reactions to the immunizations (*Marrucci* column 8 lines 58-67 where in a medical condition is an allergy and an allergy is a “complex genetic disorder” (The Genetics of Asthma Am. J. Respir. Crit. Care Med., Volume 161, Number 3, March 2000, S202-S206).

Response to Arguments

20. Applicant's arguments with respect to claim 1, 26, and 46 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eliza Squires whose telephone number is (571)270-7052. The examiner can normally be reached on Monday through Friday 8 am - 4 pm Eastern Standard Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry O'Connor can be reached on 571-272-6787. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/E. S./

Examiner, Art Unit 3626

4/19/2010

/Neal R Sereboff/

Examiner, Art Unit 3626

4/21/2010